

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 4

Diversion and Consent Calendar Procedures

4.3 Requirements of the Crime Victim's Rights Act

C. Offenses to Which the CVRA Applies

Effective January 1, 2006, 2005 PA 184 amended MCL 780.781(1)(f) to add four offenses to the "serious misdemeanors" to which the CVRA* applies. Add the following offenses to the bulleted list beginning on page 74 and ending on page 75:

- contributing to the neglect or delinquency of a minor, MCL 750.145;
- using the internet or a computer to make a prohibited communication, MCL 750.145d;
- intentionally aiming a firearm without malice, MCL 750.233;
- injuring a worker in a work zone, MCL 257.601b(2).

*2005 PA 184 also changed the title of the act to the "William Van Regenmorter Crime Victim's Rights Act." MCL 780.751.

CHAPTER 5

Petitions and Preliminary Hearings

5.17 Requirements of the Crime Victim's Rights Act

A. Requirements for Charging Documents

Effective January 1, 2006, 2005 PA 184 amended MCL 780.781(1)(f)(iii) to add an offense to which the CVRA applies. On page 110, insert the following before the first bullet:

- injuring a worker in a work zone, MCL 257.601b(2);

CHAPTER 9

Trials in Delinquency Cases

9.10 Limitations on Testimony Identifying a Victim's Address, Place of Employment, or Other Information

On page 204, replace the second sentence of the first paragraph with the following text:

Effective January 1, 2006, MCR 6.201(A)(1) was amended to permit the disclosure of only the name of a witness if the witness is made available to the opposing party for interview.

CHAPTER 10

Juvenile Dispositions

10.13 Restitution

B. Claims for Restitution That Arise After Disposition or Sentencing

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766 and MCL 780.794. On page 236, replace the last paragraph of subsection (B) with the following text:

MCL 780.766(22) and MCL 780.794(22) allow a court to amend an order of restitution on the motion of a prosecuting attorney, victim, or defendant “based upon new information related to the injury, damages, or loss for which the restitution was ordered.”

D. Required Restitution When Ordering an Informal Disposition in a Juvenile Delinquency Case

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(2). On page 237, replace the final sentence of the paragraph with the following text:

“For an offense that is resolved informally by means of a consent calendar diversion or by another informal method that does not result in a dispositional hearing, by assignment to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.” MCL 780.794(2).

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Juvenile Dispositions

10.13 Restitution

E. Persons or Entities Entitled to Restitution

On page 239, insert the following information immediately before subsection (F):

Parents of a minor victim. MCL 780.794(24)* states that “[i]f the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

“(a) Homemaking and child care expenses.

“(b) Income loss not ordered to be paid under [MCL 780.794(4)(h)].*.”

“(c) Mileage.

“(d) Lodging or housing.

“(e) Meals.

“(f) Any other cost incurred in exercising the rights of the victim or a parent under this act.”

*Effective January 1, 2006. 2005 PA 184.

*See this month’s update to Section 10.13(I) for discussion of this statutory provision.

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Juvenile Dispositions

10.13 Restitution

H. Calculating Restitution Where the Offense Results in Property Damage, Destruction, Loss, or Seizure

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(3) to eliminate the suggestion that a court has discretion in ordering restitution for property damage or loss.

At the bottom of page 240, in the first sentence, replace the word “may” with “shall.” MCL 780.794(3).

CHAPTER 10

Juvenile Dispositions

10.13 Restitution

I. Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

Expenses related to physical or psychological injury.

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(4) to eliminate the suggestion that a court has discretion in ordering restitution for costs related to a victim's physical or psychological injury. At the bottom of page 241, in the first sentence, replace the word "may" with "shall." MCL 780.794(4).

2005 PA 184 also added a provision that requires a court to order restitution to a victim's relatives for lost income. In the middle of page 242, after subsection "(e)," insert the following:

* * *

"(h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury." MCL 780.794(4)(a)-(e), (h).

CHAPTER 10

Juvenile Dispositions

10.13 Restitution

N. Restitution Ordered As a Condition of Probation

Wage assignment by employed defendant or juvenile as a condition of probation.

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(18). On page 247, replace the paragraph with the following text:

As a condition of probation, “the court shall order any employed juvenile to make regularly scheduled restitution payments.” If a juvenile misses two or more regularly scheduled payments, the court shall order the juvenile to execute a wage assignment to pay the restitution. MCL 780.794(18).

CHAPTER 10

Juvenile Dispositions

10.13 Restitution

P. Payment of Restitution When Juvenile Is Placed in a Juvenile Facility or Sentenced to Jail or the Department of Corrections

Effective January 1, 2006, 2005 PA 184 added MCL 780.796b. Similar to MCL 791.220h, this new statutory provision requires a sheriff, the Department of Corrections, the Department of Human Services,* or a County Juvenile Agency, as applicable, to deduct money from a juvenile's account to pay restitution that has been ordered.

*Formerly the Family Independence Agency.

On page 249, change the title of this subsection as indicated above and add the following text before the first paragraph:

If a juvenile has been ordered to pay restitution and is placed in a juvenile facility, “and if the juvenile receives more than \$50.00 in a month, the department of human services [DHS] or the county juvenile agency [CJA], as applicable, shall deduct 50% of the amount over \$50.00 received by the juvenile for payment of the restitution.” MCL 780.796b(3). When the amount deducted exceeds \$100.00, or when the juvenile is released from the facility, the DHS or CJA must promptly send the money to the victim. *Id.*

If a juvenile has been ordered to pay restitution and is sentenced to jail, “and if the juvenile receives more than \$50.00 in a month, the sheriff shall deduct 50% of the amount over \$50.00 received by the juvenile for payment of the restitution.” MCL 780.796b(2). When the amount deducted exceeds \$100.00, “or when the juvenile is released to probation or discharged on the maximum sentence,” the sheriff must promptly send the money to the victim. *Id.*

The DJS, CJA, or sheriff must notify the juvenile in writing of deductions and restitution payments, and they must not alter the above statutory requirements through an agreement with the prisoner. MCL 780.796b(4).

On page 249, before the last partial paragraph, insert the following:

MCL 780.796b(1) contains substantially similar requirements. MCL 780.796b contains the additional requirement that the department notify the prisoner in writing of deductions and restitution payments.

CHAPTER 10

Juvenile Dispositions

10.13 Restitution

Q. Modification of Method of Payment of Restitution

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(12). In the middle of page 250, replace the quotation of MCL 780.794(12) with the following:

“Subject to subsection (18), a juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim, the court may modify the method of payment.”

MCL 780.794(18), discussed in the January 2006 update to Section 10.13(N), requires a court to order an “employed juvenile to make regularly scheduled restitution payments.” If the juvenile misses making two or more such payments, the court must order the juvenile to execute a wage assignment. *Id.*

CHAPTER 10

Juvenile Dispositions

10.13 Restitution

R. Enforcement of Restitution Orders

Restitution order is not dischargeable in a bankruptcy proceeding.

On page 253, insert the following text immediately before subsection (S):

Effective January 1, 2006, 2005 PA 184 added MCL 780.794(23), which requires a court that receives notification of a defendant obligated to pay restitution having declared bankruptcy to forward a copy of the notice to the prosecuting attorney. The prosecuting attorney is then required to forward the notice to the victim at his or her last-known address.

U. Unclaimed Restitution

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(21). At the bottom of page 253, replace the only sentence in this subsection with:

If they are not claimed within two years after being ordered, or a person has refused to accept them, restitution payments must be deposited in the “crime victim’s rights fund” via the court’s monthly transmittal. MCL 780.794(21).*

*See Section 10.14, below, for further discussion.

CHAPTER 10

Juvenile Dispositions

10.14 Crime Victim's Rights Fund Assessment

B. Felony, "Serious Misdemeanor," "Specified Misdemeanor," and "Juvenile Offense" Defined

Effective January 1, 2006, 2005 PA 184 amended MCL 780.811(1)(a) to expand the definition of "serious misdemeanor." On page 255, add the following new offenses to the bulleted list of "serious misdemeanors":

- contributing to the neglect or delinquency of a minor, MCL 750.145;
- using the internet or a computer to make a prohibited communication, MCL 750.145d;
- intentionally aiming a firearm without malice, MCL 750.233;
- injuring a worker in a work zone, MCL 257.601b.

CHAPTER 10

Juvenile Dispositions

10.14 Crime Victim's Rights Fund Assessment

D. Depositing Unclaimed Restitution in the "Crime Victim's Rights Fund"

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(21). On page 258, replace the quotation of MCL 780.794(21) with the following:

"If a person or entity entitled to restitution under this section cannot be located, refuses to claim the restitution within two years after the date on which he or she could have claimed the restitution, or refuses to accept the restitution, the restitution to which that person or entity is entitled shall be deposited in the crime victim's rights fund created under section 4 of 1989 PA 196, MCL 780.904, or its successor fund. However, a person or entity entitled to that restitution may claim that restitution any time by applying to the court that originally ordered and collected it. The court shall notify the crime victim services commission of the application and the commission shall approve a reduction in the court's revenue transmittal to the crime victim's rights fund equal to the restitution owed to the person or entity. The court shall use the reduction to reimburse that restitution to the person or entity."

10.15 Allocation of Fines, Costs, Restitution, Fees, Assessments, and Other Payments

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766a(1) and MCL 780.794a(1) to delineate allocation of payments when an individual or juvenile is subject to payments in more than one proceeding. In the middle of page 259, before the subsection entitled "**Criminal cases**," insert the following:

MCL 780.794a(1) states in part:

"If a person is subject to fines, costs, restitution, assessments, probation or parole supervision fees, or other payments in more than 1 proceeding in a court and if a person making a payment on the fines, costs, restitution, assessments, probation or parole supervisions fees, or other payments does not indicate the

proceeding for which the payment is made, the court shall first apply the money paid to a proceeding in which there is unpaid restitution to be allocated as provided in this section.”

An identical provision is contained in MCL 780.766a(1), specifically governing allocation of payments in criminal cases.

CHAPTER 17

Designated Case Proceedings—Arraignments, Designation Hearings, and Preliminary Examinations

17.17 Requirements to Waive a Preliminary Examination

Effective January 1, 2006, MCR 6.110(A) was amended. In the middle of page 404, replace the first sentence of the third paragraph with the following text:

“Where a preliminary examination is permitted by law, the people and the defendant are entitled to a prompt preliminary examination.” MCR 6.110(A).

CHAPTER 21

“Automatic Waiver” Proceedings—Juvenile Sentencing Hearings

21.8 Withdrawal of Pleas

On page 456, insert the following after the discussion of *People v Haynes (After Remand)*, 221 Mich App 551 (1997):

Note: Effective January 1, 2006, MCR 6.311 was deleted. MCR 6.310(C) now governs motions to withdraw pleas after sentencing.

CHAPTER 25

Recordkeeping & Reporting Requirements

25.6 Destruction of Family Division Files and Records

Effective January 1, 2006, MCR 3.925(E) was amended. Beginning with the second full paragraph on page 495 and ending with the first full paragraph on page 496, replace the text with the following:

MCR 3.925(E)(2)(c) states that, except for diversion and consent calendar records, “the court must destroy the files and records pertaining to a person’s juvenile offenses when the person becomes 30 years old.”

CHAPTER 25

Recordkeeping & Reporting Requirements

25.16 Setting Aside a Juvenile Adjudication

D. Submission of Application to Attorney General and Prosecuting Attorney

“Serious misdemeanors.”

Effective January 1, 2006, 2005 PA 184 amended MCL 780.811(1)(a), expanding the list of “serious misdemeanors.” Insert the following offenses into the bulleted list on pages 513-514:

- contributing to the neglect or delinquency of a minor, MCL 750.145;
- using the internet or a computer to make a prohibited communication, MCL 750.145d;
- intentionally aiming a firearm without malice, MCL 750.233;
- *injuring a worker in a work zone, MCL 257.601b.*

CHAPTER 25

Recordkeeping & Reporting Requirements

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

C. Post-Registration Change of Status

Effective January 1, 2006, 2005 PA 123 amended MCL 28.725(1). On page 525, replace the first bullet with the following:

- The individual changes or vacates his or her residence, domicile, or place of work or education.

CHAPTER 25

Recordkeeping & Reporting Requirements

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

L. Registration Violation Enforcement

Penalties.

Effective January 1, 2006, 2005 PA 132 amended MCL 28.729(2). Replace the text of the second bullet (“Failure to Comply with Yearly or Quarterly Verification”) in the October 2004 update with the following:

An individual who fails to comply with MCL 28.725q, other than the payment of the registration fee, is guilty of a crime as follows:

- If the individual has no prior convictions for violations of SORA, a misdemeanor punishable by imprisonment for not more than 93 days, or a fine of not more than \$1,000.00, or both.
- If the individual has one prior conviction for a violation of SORA, a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than \$2,000.00, or both.
- If the individual has two or more prior convictions for violations of SORA, a felony punishable by imprisonment for not more than four years, or a fine of not more than \$2,500.00, or both.

MCL 28.729(2)(a)-(c).

- Failure to Comply with Registration Form Requirements

On page 538, delete the second paragraph under this bullet.

CHAPTER 25

Recordkeeping & Reporting Requirements

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

N. Student Safety Zones

Effective January 1, 2006, 2005 PA 121 and 127 added new provisions to the Sex Offenders Registration Act (SORA). The new provisions divide the SORA into three articles, add a new article criminalizing a registrant's residing, loitering, or working in a "student safety zone," and establish penalties for violations of the new prohibitions. On page 541, immediately before Section 25.19, insert new subsection (N) as indicated above and insert the following text:

Prohibitions on residing, working, or loitering in a "student safety zone."

Except as explained below, an individual required to be registered under SORA shall not reside, work, or loiter within a "student safety zone." MCL 28.734(1)(a)-(b) and MCL 28.735(1). A "student safety zone" is "the area that lies 1,000 feet or less from school property." MCL 28.733(f). MCL 28.733 also contains definitions of "loiter," "school," and "school property." See MCL 28.733(b), (d), and (e). A first violation of MCL 28.734(1) or MCL 28.735(1) is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$1,000.00, or both. A second or subsequent violation is deemed a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000.00, or both. MCL 28.734(2) and MCL 28.735(2). An individual may be charged with, convicted of, and punished for a violation of MCL 28.734 or 28.735 and any other violation committed by the individual while violating MCL 28.734 or 28.735.

An individual who resides in a student safety zone must change his or her residence to a location outside the student safety zone within 90 days after he or she is sentenced for a conviction that requires registration. However, the individual must not initiate or maintain contact with a minor within that student safety zone during this 90-day period. MCL 28.735(4).

Exemptions from criminal prohibitions. The offenders described below are exempt from the criminal prohibitions on residing or working within a student safety zone. These exemptions are contained in MCL 28.734(3), MCL 28.735(3), and MCL 28.736. However, offenders required to register under SORA must not loiter in a student safety zone, and even if the offender falls under one of the exemptions listed below, he or she must not initiate or maintain contact with a minor in a student safety zone except as noted below. MCL 28.734(3) and MCL 28.735(3).

The following are exempted from the prohibitions:

- ♦ An offender who is not more than 19 years old, attends secondary or postsecondary school, and resides with his or her parent or guardian. The offender may initiate or maintain contact with a minor with whom he or she attends school in conjunction with that attendance. MCL 28.735(3)(a).
- ♦ An offender who is not more than 26 years old, attends a special education program, and resides with his or her parent or guardian or in a group home or assisted living facility. The offender may initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance. MCL 28.735(3)(b).
- ♦ An offender who was residing within a student safety zone on January 1, 2006. MCL 28.735(3)(c).
- ♦ An offender who is a patient in a hospital or hospice located in a student safety zone. MCL 28.735(3)(d).
- ♦ An offender who resides in a prison, jail, juvenile facility, or other correctional facility within a student safety zone or who is a patient in a mental health facility under a commitment order. MCL 28.735(3)(e).
- ♦ An offender who was working in a student safety zone on January 1, 2006. MCL 28.734(3)(a).
- ♦ An offender whose place of employment is within a student safety zone because a school is established or relocates there. MCL 28.734(3)(b).
- ♦ An offender who only intermittently or sporadically enters a student safety zone for purposes of work. MCL 28.734(3)(c).
- ♦ An offender “convicted” of not more than one of the following offenses:
 - An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a) if either of the following applies:
 - the individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
 - the individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and

*Note that these are the same offenses that make an offender eligible to petition for exemption from registration under SORA. See the October 2004 update to Section 25.18 that added a new subsection (l).

is not more than three years older than the victim. MCL 28.736(1)(a).

- An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a) and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g if either of the following applies:
 - the individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
 - the individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.736(1)(b).
- An individual who has successfully completed his or her probationary period under the Holmes Youthful Trainee Act, MCL 762.11-762.15, for committing a listed offense and has been discharged from youthful trainee status. MCL 28.736(1)(c).

Criminal probation orders. Effective January 1, 2006, 2005 PA 126 permits a court to place on probation, except as otherwise provided by law and for a term of not less than five years, an individual convicted of a “listed offense” under SORA. MCL 771.2a(5). This applies to juveniles sentenced as adults and to juveniles who were placed on “probation” and committed to the Department of Human Services (DHS)* or a County Juvenile Agency (CJA) following “automatic waiver” proceedings. MCL 771.2a(4).

*Formerly the Family Independence Agency.

If an individual is placed on probation in accordance with MCL 771.2a(5), the court must order that the individual not:

- reside within a student safety zone;
- work within a student safety zone; and
- loiter within a student safety zone.

MCL 771.2a(6).

As with the criminal prohibitions in MCL 28.734 and 28.735, MCL 771.2a exempts certain probationers from its residence and work restrictions, but no probationer required to register under SORA must loiter in a student safety zone, and, in all cases, the court must order the probationer not to initiate or maintain contact with a minor in a student safety zone except as noted below. MCL 771.2a(7)-(10). If any of the following apply, the court shall not impose

a condition of probation that prohibits an individual from residing within a student safety zone:

- The individual is 19 years of age or younger, attends secondary or postsecondary school, and resides with his or her parent or guardian. The individual must be permitted to initiate or maintain contact with a minor with whom he or she attends secondary or postsecondary school in conjunction with that school attendance. MCL 771.2a(7)(a).
- The individual is 26 years of age or younger, attends a special education program, and resides with his or her parent or guardian, or resides in a group home or assisted living facility. The individual must be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance. MCL 771.2a(7)(b).
- The individual was residing within a student safety zone on January 1, 2006. A court may allow contact with any minors named in the probation order for good cause shown and as specified in the probation order. MCL 771.2a(7)(c).
- The court must not prohibit an offender from being a patient in a hospital or hospice located in a student safety zone. MCL 771.2a(8).

If any of the following apply, the court shall not impose a condition of probation that prohibits an individual from working within a student safety zone:

- The individual was working within the student safety zone on January 1, 2006. A court may allow contact with any minors named in the probation order for good cause shown and as specified in the probation order. MCL 771.2a(9).
- An individual only intermittently or sporadically enters a student safety zone for purposes of work. A court may allow contact with any minors named in the probation order for good cause shown and as specified in the probation order. MCL 771.2a(10).

MCL 771.2a(11) permits a court to exempt an individual from probation under MCL 771.2a(5) if either of the following apply:

“(a) The individual has successfully completed his or her probationary period under [MCL 762.11 to 762.15] for committing a listed offense and has been discharged from youthful trainee status.

“(b) The individual was convicted of committing or attempting to commit a violation solely described in section 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520e, and at the

time of the violation was 17 years of age or older but less than 21 years of age and is not more than 5 years older than the victim.”

MCL 771.2a(12) contains the same definitions as MCL 28.733. Most importantly, “student safety zone” is “the area that lies 1,000 feet or less from school property.” MCL 771.2a(12)(f).